IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.710/2006

Decided on.16.6.2007

Executive Engineer, HPSEB **…Petitioner.**

Versus

Davinder Nath & another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioner : **Mr. Sharwan Dogra, Advocate.**

For the respondent No.1 **Mr. Rajinder Thakur, Advocate vice Mr. Dharamvir Sharma, Advocate.**

Rajiv Sharma, J. (Oral)

This petition arises out of the award dated 25th May, 2006 in reference No. 96/2003 (RBT No. 455/04) passed by the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala. The State Government has made the following reference to the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala:

> **"Whether the termination of services of Sh. Devinder Nath s/o Sh. Uttam Singh by the Sr. Executive Engineer, Elect. Division HPSEB Gohar, District Mandi, H.P. without complying the provisions of Industrial Disputes Act, 1947 and clause 14 (2) of HPSEB Certified Standing Order is legal and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

In sequel to reference, the workman had filed statement of claim to which the reply was also filed by the employer. The case set out by the workman in the statement of claim was that he was engaged as Beldar on 7.3.1989 to 25.3.1996 and thereafter he was called back on 16th February, 2000 vide Annexure RA-1. The workman has also stated in his statement of claim that two workmen, namely, Devender Nath and Yashoda Nand had been retained while retrenching him in violation of the mandatory provisions of Law. The Labour Court on the basis of the evidence led by the parties has answered the reference in affirmation and has directed the re-engagement of the workman but without back wages.

Mr. Shrawan Dogra, Advocate appearing on behalf the petitioner has strenuously argued that the retrenchment of the workman as effected had been in accordance with law and no workman junior to the respondent No.1 was retained at the time of his retrenchment.

Mr. Rajinder Thakur, Advocate appearing on behalf of the workman has argued that no notice was issued to the workman as required under law and two persons, namely, Devendar Nath and Yashoda Nand were retained, thus, the Board violated the principles of last come first go.

I have heard the parties and perused the record.

The learned Labour Court on the basis of the evidence brought on record by the parties had correctly come to the conclusion that the retrenchment of the workman was effected without issuing him any notice as contemplated in law. RW-1, who appeared for the employer-Board had admitted in cross-examination that no notice has been issued to the workman and two persons, namely, Devendar Nath and Yashoda Nand were retained. Thus, there is violation of principles of last come first go as per section 25 G of the Industrial Disputes Act, 1947. As such neither

there is any jurisdictional error nor any procedural impropriety in the award dated 25.5.2006.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

June 16, 2007
Awasthi